

CHAPTER 124

PROBATE PROCEEDINGS AND FIDUCIARY AND TRUSTEE POWERS AND DUTIES

H.F. 232

AN ACT relating to probate proceedings, including fiduciary and trustee duties, and including applicability provisions.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. [Section 633.78, subsection 1](#), Code 2023, is amended to read as follows:

1. A fiduciary under [this chapter](#) may present a written request to any person for the purpose of obtaining property owned by a decedent or by a ward protected person of a conservatorship for which the fiduciary has been appointed, or property to which a decedent or ward protected person is entitled, including information about property owned by a decedent or protected person that has passed or will pass by beneficiary designation or joint tenancy ownership, or for information about such property needed to perform the fiduciary's duties. The request must contain statements confirming all of the following:

a. The fiduciary's authority has not been revoked, modified, or amended in any manner which would cause the representations in the request to be incorrect.

b. The request has been signed by all fiduciaries acting on behalf of the decedent or ward protected person.

c. The request has been dated and affirmed under penalty of perjury to be true and correct or has been sworn and subscribed to under penalty of perjury before a notary public as provided in [chapter 9B](#).

d. A photocopy of the fiduciary's letters of appointment is being provided with the request.

Sec. 2. [Section 633.78, subsection 4](#), paragraph a, Code 2023, is amended to read as follows:

a. Damages sustained by the decedent's or ward's protected person's estate.

Sec. 3. [Section 633.301](#), Code 2023, is amended to read as follows:

633.301 Copy of will for executor.

~~When~~ Upon request by the executor, when a will has been admitted to probate and certified pursuant to [section 633.300](#), the clerk shall cause a certified copy thereof to be placed in the hands of the executor to whom letters are issued. The clerk shall retain the will in a separate file provided for that purpose until the time for contest has expired, and promptly thereafter shall place it with the files of the estate.

Sec. 4. [Section 633.309](#), Code 2023, is amended to read as follows:

633.309 Time within which action must be commenced.

1. An action to contest or set aside the probate of a will must be commenced in the court in which the will was admitted to probate within the later to occur of four months from the date of second publication of notice of admission of the will to probate or one month following the mailing of the notice to all heirs of the decedent and devisees under the will whose identities are reasonably ascertainable, at such persons' last known addresses.

2. A party claiming the decedent's will was procured in whole or in part by tortious interference with inheritance must join such claim together in a timely will contest. The time period set out in [this section](#) applies to both the will contest and procurement of the decedent's will by tortious interference with inheritance if the party making the claim was given notice pursuant to [section 633.304](#).

Sec. 5. [Section 633.555](#), Code 2023, is amended to read as follows:

633.555 Procedure in lieu of conservatorship for a minor.

1. If a conservator has not been appointed for a minor, money due to a minor or other property to which a minor is entitled, not exceeding in the aggregate ~~twenty-five~~ fifty thousand dollars in value, shall be paid or delivered to a ~~custodian under any uniform transfers to minors Act.~~ one or more of the following:

a. A custodian under the uniform transfer to minor account established for the protected person pursuant to [chapter 565B](#) or the laws of any other state.

b. A custodial trustee under a uniform custodial trust account established for the protected person pursuant to [chapter 633F](#) or the laws of any other state.

c. An account owner or participant under a college savings plan account established for the protected person pursuant to section 529 of the Internal Revenue Code or [chapter 12D](#).

d. The account owner under an ABLE account established for the protected person with disabilities pursuant to section 529A of the Internal Revenue Code or [chapter 12I](#).

e. The structured settlement obligor, as defined in [section 682.2](#), of a structured settlement, as defined in [section 682.2](#), established for the benefit of the protected person, where the protected person will not begin receiving payments from the structured settlement prior to reaching age eighteen.

2. If a conservator has not been appointed for a minor, and the money due to a minor or other property to which a minor is entitled exceeds fifty thousand dollars in the aggregate, the property may be paid or delivered in the manner set forth in [subsection 1](#) only if such transfer is authorized by the court.

3. The written receipt of the custodian constitutes an acquittance of the person making the payment of money or delivery of property.

Sec. 6. [Section 633.561, subsections 3 and 6](#), Code 2023, are amended to read as follows:

3. If the respondent is entitled to representation and is indigent or incapable of requesting counsel, the court shall appoint an attorney to represent the respondent. The cost of court appointed counsel for indigents, including the cost of the trial transcript, shall be assessed against the county in which the proceedings are pending. For the purposes of [this subsection](#), the court shall find a person is indigent if the person's income and resources do not exceed one hundred fifty percent of the federal poverty level or the person would be unable to pay such costs without prejudicing the person's financial ability to provide economic necessities for the person or the person's dependents.

6. If the court determines that it would be in the respondent's best interest to have legal representation with respect to any proceedings in a guardianship or conservatorship, the court may appoint an attorney to represent the respondent at the expense of the respondent or the respondent's estate, or if the respondent is indigent the cost of the court appointed attorney, including the cost of the trial transcript, shall be assessed against the county in which the proceedings are pending.

Sec. 7. **NEW SECTION. 633A.4403 Trustee-written request and third-party protection.**

1. A trustee under [this chapter](#) may present a written request to any person for the purpose of obtaining information needed to perform the trustee's duties or information regarding any of the following property:

a. Owned by the trust for which the trustee is acting as fiduciary.

b. To which a living or deceased settlor is entitled.

c. Owned by the deceased settlor at the time of death, including information about property of a deceased settlor that has passed or will pass by beneficiary designation or joint tenancy ownership.

2. The written request must include a certification of trust that complies with [section 633A.4604](#). A person to whom a request is presented under [this section](#) may require that the trustee presenting the request provide proof of the trustee's identity.

3. A person who in good faith provides the property or information a trustee requests under [this section](#), after taking reasonable steps to verify the identity of the trustee and who has no knowledge that the representations contained in the request are incorrect, shall not be liable to any person for so acting and may assume without inquiry the existence of the facts contained in the request. The period of time to verify the trustee's authority shall not exceed ten business days from the date the person received the request. Any right or title acquired from the trustee in consideration of the provision of property or information under [this section](#) is not invalid in consequence of a misapplication by the trustee. A transaction, and a lien created by a transaction, entered into by the trustee and a person acting in reliance

upon a request under [this section](#) is enforceable against the assets for which the trustee has responsibility.

4. If a person refuses to provide the requested property or information within ten business days after receiving a request under [this section](#), the trustee may bring an action to recover the property or information or compel its delivery against the person to whom the trustee presented the written request. An action brought under [this section](#) must be brought within one year after the date of the act or failure to act. If the court finds that the person acted unreasonably in failing to deliver the property or information as requested in the written request, the court may award any or all of the following to the trustee:

- a. Damages sustained by the trust or by a living or deceased settlor's estate.
- b. Costs of the action.
- c. A penalty in an amount determined by the court, but not less than five hundred dollars or more than ten thousand dollars.
- d. Reasonable attorney fees, as determined by the court, based on the value of the time reasonably expended by the attorney and not by the amount of the recovery on behalf of the trustee.

5. [This section](#) does not limit or change the right of beneficiaries, heirs, or creditors of a living or deceased settlor to estate or trust property to which they are otherwise entitled.

Sec. 8. [Section 633B.211, subsection 2](#), Code 2023, is amended by adding the following new paragraphs:

NEW PARAGRAPH. *h.* Establish a medical assistance special needs trust pursuant to [chapter 633C](#) for the benefit of the principal and transfer an interest of the principal in real property, stocks and bonds, accounts with financial institutions or securities intermediaries, insurance, annuities, and other property to the trustee of any such trust.

NEW PARAGRAPH. *i.* Establish a medical assistance income trust pursuant to [chapter 633C](#) for the benefit of the principal and transfer an income interest of the principal to the trustee of any such trust.

Sec. 9. **APPLICABILITY.** The following apply to estates, trusts, and conservatorships in existence on or after the effective date of this Act, that were opened or created before, on, or after the effective date of this Act:

1. The sections of this Act amending [section 633.78](#).
2. The section of this Act amending [section 633.555](#).
3. The section of this Act enacting [section 633A.4403](#).

Approved June 1, 2023